

Zoning Board of Adjustment
Approved Minutes of February 20, 2018

Members Present:

Billie Maloney (Maloney) Chair
Kevin Scott (Scott), Vice Chair
Courtney Cashman (Cashman)
Rick Snyder (Snyder) PB Rep/Alternate
Adam Maciaszczyk (Maciaszczyk)
Jean Methot (Methot), Alternate
Jack Cannon (Cannon) Selectman Liaison

Absent: None

Members of the Public Present:

Jerome Gesel
Attorney Cronin
Attorney Bennett
Amber Bell-Ragnarsson
Eric Mitchell
Matt Gelinas
Myrick Bunker, Building Inspector
Mike Oleson, Road Agent
Andrew Bredstein & Son
and other persons unknown to the recording secretary

Agenda:

1. Meeting Convenes/Roll Call
2. Correspondence: Town Report (Chair Maloney)
Letters of Support, Gesel
3. Unfinished Business: Approve Minutes January 16, 2018
Rules of Procedure (Adam)
4. New Business:
 - a. Budgets & Revenues
 - b. New Appointment – Matt Gelinas
 - c. Training – Spring Conference
“Signs” handbooks (Courtney/Adam)
Reference for New Members (Matt)
Legislative Update (RTK, Foley) – Attorney Bennett
 - d. Town Webpage, Zoning Board Webpage Updates – Nancy
5. Hearings

- 46 a. Tax Map 002, Lot 070 in the R1 Residential Zone located at 236 Haverhill
47 Road.

48
49 Continuance of hearing of Eric Mitchell for Amber Bell-Ragnarsson, 236
50 Haverhill Road, M/L 002-070-000 for a variance from Article 5, 5.3.5 (Table
51 1) for a 3-lot subdivision of which 2 lots have short frontage and driveway
52 side setbacks.
53

- 54 b. Tax Map 016, Lot 009 in the R1 Residential Zone located at 15 Chester
55 Street.

56
57 Application of Mary Gesel, Trustee of the Francis X. Gesel, Sr., Revocable
58 Trust of 2009 for a variance from Article 5.3.2; 5.3.2.2(stet); 4.4.2.1; 4.4.3.3;
59 and 4.4.3.4 to permit a portion of the existing structures to continue to be
60 used as a seasonal ice-cream shop; the existing signage supporting the ice-
61 cream shop business to remain in place; and occupancy of the hobby shop
62 to remain.
63

64 1. Meeting Convenes/Roll Call
65

66 Chair Maloney called the meeting to order at 7:08 pm by roll call. Present were Chair
67 Maloney, Adam Maciaszczyk, Vice Chair Kevin Scott, Richard Snyder, Courtney Cashman
68 and Jean Methot.
69

70 2. Correspondence:
71

72 Town Report – Chair Maloney
73

74 Chair Maloney advised that she has completed the Zoning Board of Adjustment's
75 submission for the annual town report which is due on March 8th.
76

77 Letters of Support – Gesel Application
78

79 Chair Maloney advised that the Board has received 39 letters in support of the Gesel's
80 application for the ice-cream shop.
81

82 3. Unfinished Business:
83

84 Approve Minutes January 16, 2018 - Tabled
85

86 2018 Zoning Board of Adjustment Rules of Procedure
87

88 Mr. Maciaszczyk signed the new Rules of Procedure and provided them to Ms. Hoijer
89 for filing with the Town Clerk.
90

91 4. New Business

- 92
93 1. Budgets & Revenues – a copy of the year to date Revenues totaling \$2,480 and
94 February 5, 2018 Budgeted Expense Sheet submitted with no changes from last
95 year were provided to each of the Board Members for review.

96
97 b. New Appointment – Matt Gelinis
98

99 Mr. Gelinis was unanimously invited to serve on the Board as a new alternate
100 member. Mr. Gelinis will provide his information to the recording secretary together with bio
101 and resume and a letter of recommendation will be forwarded to the Selectmen. Mr. Gelinis
102 will attend a scheduled meeting of the BOS to be appointed and thereafter have his oath
103 sworn by the Town Clerk.
104

105 c training
106

107 Spring Conference 2018. Each of the members were provided with a copy of the flyer
108 and topics concerning attendance of the NH OSI 24th Annual Spring Planning & Zoning
109 Conference on Saturday April 28th, from 8 am to 3:30 pm at the Courtyard by Marriott
110 Grappone Conference Center, 70 Constitution Avenue, Concord, NH with registration
111 opening on February 27, 2018. The cost to attend is \$55.00/member and includes breakfast
112 and lunch. Ms. Hoijer indicated that one of the topics would be the ZBA Decision Making
113 Process which the Board had previously considered having NHMA counsel come out to do at
114 a cost of \$450 so it would be a considerable savings and would be a helpful training tool to
115 craft strong decisions. Chair Maloney suggested this might be good for Mr. Gelinis to attend
116 as a new member.
117

118 Ms. Hoijer gave Mrs. Cashman and Mr. Maciaszczyk the publication “Signs” to read
119 and return.
120

121 Ms. Hoijer provided Mr. Gelinis with a handout of web references for new members.
122

123 Attorney Bennett provided the Board with legislative updates concerning the Right to
124 Know Law and Foley v. Enfield.
125

126 d Town Webpage/Zoning Board Webpage – Nancy
127

128 Ms. Hoijer advised that the town employees had begun their training relative to the
129 town's new webpage which will launch on March 1st and encouraged each of the members to
130 look at other town's zoning board pages and see what changes they would like to implement.
131 Ms. Hoijer advised that she had contacted town Treasurer Lamphere to see about adding
132 online payments for zoning board applications to the Town's EB2 system.
133

134 5. Hearings
135

136 Vice Chair Scott read out loud the Public Notice which had been posted on the town's
137 webpage on February 2, 2018; in the Town Hall in two places, at the Chester Post Office; and

published in the Tri-Town Times on February 8, 2018. All provided abutters were noticed by certified mail on February 2, 2018, at least five (5) days prior to the meeting.

a Tax Map 016, Lot 009 in the R1 Residential Zone located at 15 Chester Street.

Application of Mary Gesel, Trustee of the Francis X. Gesel, Sr., Revocable Trust of 2009 for a variance from Article 5.3.2; 5.3.2.2(stet); 4.4.2.1; 4.4.3.3; and 4.4.3.4 to permit a portion of the existing structures to continue to be used as a seasonal ice-cream shop; the existing signage supporting the ice-cream shop business to remain in place; and occupancy of the hobby shop to remain.

Chair Maloney indicated that the members voting on this application will be: Chair Billie Maloney, Adam Maciaszczyk, Vice Chair Kevin Scott, Richard Snyder, and Courtney Cashman.

Chair Maloney reported that there had been quite a number of emails sent in support of the Gesel's application concerning the ice-cream shop and provided copies to Attorney Cronin.

Mr. Snyder motioned to enter the emails into the record. Mr. Methot seconded his motion, with all in favor, so moved.

Chair Maloney recognized Attorney Cronin who was present to represent the applicant. Chair Maloney brought to his attention that she believed his request of a variance from Article 5.3.2.2 which is open space development was in error. Attorney Cronin requested that it be removed from the application.

Attorney Cronin thanked the Board for their patience and summarized that while a lot of issues have been resolved, the Ice-Cream Shop, which pulled its permits in 2007 had been told, at that time, that the use was consistent with what was there in 2008.

Attorney Cronin continued that in 2014 Mr. Gesel, the operator of the business conducted on the premises, began offering hot foods. Concerns became raised that fire suppression, range hoods etc. expanded the use beyond reason. The operator of the business met with Fire Safety to plan to address the various valid life/safety issues and to cooperate with Code Enforcement officials. The applicant is now head of the schedule which began Nov. 2017 with remaining phases to be finished in the coming months.

Attorney Cronin advised that the applicant was seeking to maintain the Ice-Cream Shop known as the **Center Scoop** in its current configuration (the way its been operated since 2008) in addition to a small hobby workshop, like you would have in a garage or basement, where small wooden toys are made with some online sales seasonally and no foot traffic, same as the type that would be allowed in a residence as a home occupation.

182 The applicant would like to maintain its current signs which include a movable sign with
183 an open flag located near a boundary, that is easy to correct, gives direction to customers,
184 indicates when its open.

185
186 Attorney Cronin indicated that in support of the application, the property has been used
187 as a restaurant for a long time, which is a feature people enjoy, documented by the
188 unprecedented number of letters of support submitted to the Board. In addition Attorney
189 Cronin submitted a letter dated February 20, 2018, written by Cynthia Aucoin, a real estate
190 broker, who was not present, from Coldwell Banker who stated that she had looked at the
191 application and rendered her opinion which was that if the variances were granted there
192 would be no detrimental effect to property values. Chair Maloney indicated to the secretary to
193 add her letter of support to those in the record.

194
195 Attorney Cronin explained the Substantial Justice prong wherein no benefit, if denied,
196 weighed in favor of the applicant.

197
198 Attorney Cronin advised that the Hardship prong had relaxed substantially since
199 *Simplex* and this building was old, its existed a long time in a charming, unique town. "We
200 can't get 100% perfection which is why we have variances to give people the chance to
201 waiver from them." "Look to the letters of support and broker's letter."

202
203 Chair Maloney asked "What are you applying for, besides Center Scoop Ice-Cream
204 Shop's use? Attorney Cronin responded "All things incidental to the operation of an ice-
205 cream shop, novelties, cold sandwiches (no hot food).

206
207 Mr. Snyder asked for clarification of "no hot food." Attorney Cronin stated that there will
208 be no appliances, only microwave, crock pots." "The fryolater and grillset are gone and that
209 was the main concern that the expansion triggered." "Just having sandwiches which grew
210 with the understanding of not just sandwiches, french fries."

211
212 Mr. Snyder continued "Cold sandwiches...now we're hearing microwave and crock
213 pot." Mr. Gesel clarified that the crock pot is for chili and stew and beans, and soup in the
214 Fall. Mr. Snyder asked "You make all of that in the crock pots?"

215
216 Attorney Cronin continued "The applicant is seeking five variances, one for the Center
217 Scoop Ice-Cream shop, the hobby shop and three signs.

218
219 Mr. Snyder stated that he had questions about the signs but taking them one at a time
220 would be appropriate.

221
222 Chair Maloney added that one of the biggest concerns is the life/safety/fire code
223 violations and invited Building Inspector Myrick Bunker who was present, to speak to those.

224
225 Mr. Bunker reported that he has met with the Fire Marshall and Mr. Gesel to develop a
226 plan to separate the commercial from the residential on the second floor, indicating drywall
227 resilient channels. "Completed what was the hardware store, one small connecting space

228 between the Old Post Restaurant to be inspected tomorrow, starting exterior egress stairwell,
229 leave woodshop, the Old Post egress on the other end of the building with one more section,
230 making progress on those.”
231

232 Mr. Snyder asked “Are we able to say that the progress, considering the limited scope:
233 ice-cream, cold sandwiches and crock pots are sufficient to provide?”
234

235 Mr. Bunker advised that “It won’t be sufficient until completed 100% to achieve fire
236 safety.”
237

238 Mr. Snyder asked “When will that be?”
239

240 Mr. Gesel responded “We submitted a time-frame plan, well ahead of it, will do the rest
241 in August when the Old Post is on vacation and won’t interfere with their business.”
242

243 Mr. Snyder asked “If we were limited to scooping ice-cream do we still need those
244 provisions?”
245

246 Mr. Bunker responded that “Yes, separating commercial from residential.”
247

248 Mr. Snyder asked “You agree that those will be made consistent with when you want to
249 open?”
250

251 Mr. Gesel responded “Full completion?”
252

253 Attorney Cronin stated that “You have life safety retroactive, seen as long as five
254 years.” “I think the ice-cream shop protection is done, that’s the major issue.” “Arguably it’s a
255 prior non-conforming use (not the stews and soups).” “Fire shouldn’t weigh too heavily.” “The
256 hobby shop is next on the agenda. You could condition the variance on that, that the hobby
257 shop gets done by June 1st.”
258

259 Mr. Snyder indicated that he didn’t want to have to wait to complete that before he can
260 open his shop.
261

262 “Phase 8 is an addition stairway that has nothing to do with the variance we are
263 requesting, a lot of homes don’t have as good a situation as they have now.”
264

265 Mr. Methot stated that “in 1999 it was supposed to be done and twenty years later
266 we’re still talking about the same subject, so if history repeats itself.”
267

268 Attorney Cronin responded that “Looking back in the minutes probably should have
269 done something stronger.”
270

271 Mr. Methot stated that “Changing what it was; hasn’t complied before; trying to give
272 him a variance for something new.” “There is no confidence on my end right now.”
273

274 Mr. Snyder opined that while its important to recognize history there is evidence that
275 this is moving in the right direction.

276
277 Attorney Cronin opined that if towns had unlimited budgets they'd be knocking on
278 every house, issue orders that were neither practical or feasible.

279
280 "Not trying to shut down, trying to restart." "Use is separate from life/safety issue." "He
281 has to comply with the Building Inspector and Fire Chief." "Its important to weigh, but its their
282 ballgame." "They have to be satisfied with it."

283
284 Chair Maloney offered that "If we conditioned the variance that he has to continue
285 working with the Building Inspector and Fire, and things don't progress, the Building Inspector
286 can simply pull his Occupancy permit and issue a Cease and Desist."

287
288 Attorney Bennett advised "To separate the two, I understand that, but Mr. Gesel walks
289 out with variance conditioned upon approval of Fire and Building, ready to be occupied."

290
291 Attorney Cronin responded that "No, the ice-cream shop is done." "Its better than
292 2008." "Sheetrock and fire separation is done." "Other issues are additions, stairwells." "I
293 understand that the Building Inspector and Fire isn't going to say its complete until its
294 complete."

295
296 Attorney Bennett added that its still going to be up to Fire and Myrick to determine if
297 they can open because progress has been made. "Its up to Gesel to communicate."

298
299 Mr. Bunker indicated that he could not issue a Certificate of Occupancy because the
300 Board of Selectmen directed that. Mr. Bunker offered that he could offer a temporary c/o in its
301 place, before Labor Day, either all finished, or once again stopped.

302
303 Mr. Scott asked "If we were to approve this based on the phasing plan and conditioned
304 it, you would be comfortable issuing a temporary c/o? Mr. Bunker indicated affirmatively.

305
306 Mr. Snyder indicated that the Board needed to be really clear here. Chair Maloney
307 stated "There are three issues, fire safety, septic and Mr. Bunker indicated that's done. "As
308 for the parking issues, you're going to have to go to the Planning Board for Site Plan Review."
309 "The Road Agent is not happy with cars parked on town property and is having trouble
310 plowing." Chair Maloney recognized Road Agent, Mike Oleson who was present and invited
311 him to speak to the matter.

312
313 Mr. Oleson reported that there has been parking of vehicles at Stevens Hall and the
314 Library. The business needs to provide parking for its employees. "Last Sunday, two ladies
315 who work for the restaurant were rushing to park and we had a conflict." "This is not a
316 municipal lot for the restaurant." "Where else are we supposed to park?" "Its an issue, a
317 problem for me." "It needs to be addressed here or at the Planning Board level." Mr. Gesel
318 disagreed stating that "Parking was not an issue until Mr. Oleson became Road Agent." "We
319 open our parking lot up to the townspeople, the church people..."

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Mr. Snyder and Mr. Bunker agreed that every business is required to have adequate parking and advised that there is a formula used to determine that using the square footage of the business.

Mr. Snyder added that “As to difficulty plowing, the ice-cream shop is seasonal.” “When its snowing, they’re closed.” “I don’t think there’s a connection.”

Mr. Snyder asked the Building Inspector “Are you still able to grant a temporary c/o even though the variance condition has not been met?” Mr. Bunker advised that “I would say that I can because that temporary c/o is still going to speak to that condition of the variance in order to.” “Mr. Bunker clarified that “I can’t grant a full c/o until the wood shop is finished.”

Mr. Snyder asked for clarification on the applicants previous request concerning the Board of Selectmen’s letter that the c/o be relinquished. Attorney Cronin advised that that application has been stayed.

Attorney Cronin stated that he “Initially thought he didn’t need relief.” “That it was a prior, non-conforming use.” “But let’s cooperate and go in and seek relief, take the path of least resistance.” “Don’t want to battle with the Board of Selectmen.”

Mr. Scott advised that “the Board had addressed this phase plan with times attached and that’s what’s bitten us before.”

Mr. Bunker advised that “We can look at the phase on such and such date and if the phase has not been complete, I can go down there tomorrow and pull that c/o and that will be the end of it.”

“5.3.2 to permit operation on a seasonal basis including sandwiches, soups and stews.” “Makes very narrow choices, need some flexibility for what an ice-cream shop usually has.”

Mr. Snyder stated that the fryolaters needed to be addressed. “No appliances intended for the purpose of cooking food beyond crock pot, microwave and a coffee pot.”

Chair Maloney directed to go over the five points. Mr. Methot advised to separate the conditions, not put them all in one sentence.

Variance for Center Scoop

Mr. Snyder began:

Public Interest. “It was well put in the correspondence that we received that the town has access and wants access to ice-cream.” “Its been there.” “Its consistent with the character, with what’s there currently.”

Spirit. "Make sure that certain things that are not desirable would not go there." "This operation is consistent with what the Ordinance was originally designed for." "It was designed to prevent McDonalds type drive-in restaurants."

Substantial Justice. "The Justice here is that it allows a building that was built many years ago, that has been there for commercial use, to be continued to be used in a manner of the desires of the town, consistent with what the applicant intends to do and has been successful at."

Hardship. "The hardship is that this is a building that has been used for this kind of purposes for decades and its old." "To be brought into compliance, that's what we're talking about doing." "The first prong is met."

"Notwithstanding the conditions to be discussed later, all met."

Vice Chair Scott stated that "I would agree, especially with the very last portion." "Notwithstanding conditions we need to discuss, that all five points have been met."

Mr. Maciaszczyk stated that "I am in agreement with the prior two statements." "I don't see anything to add beyond that." "I would like to see conditions."

Mrs. Cashman stated that "Exact same, in complete agreement, conditions are an important key to this."

Mr. Methot stated that while he was not voting the use is reasonable.

Chair Maloney stated that "The use is reasonable, there is no harm to the public." Motioning that:

"5.3.2 to allow continued operation of the ice-cream shop, to operate on a seasonal basis. Mr. Scott seconded her motion, with Chair Maloney, Mr. Maciaszczyk, Mrs. Cashman, Mr. Scott voting in favor, so moved, with the following conditions:

- 1. Site plan review with the Planning Board to concentrate on parking issues;**
- 2. Continues life safety upgrades to the satisfaction of officials;**
- 3. Improvements to be completed to the satisfaction of the Building Inspector and Fire before issuance of any temporary certificate of occupancy."**

Mr. Methot asked about timing. Mr. Snyder suggested that it be left to the Building Inspector not specific dates.

Mr. Maciaszczyk raised the concern about the language of the multiple cooking elements to be used. Mr. Gesel indicated a Panni Press. Mr. Scott advised that would be considered hot food, hot sandwiches but if the Building Inspector is comfortable.

Mr. Snyder would like to note in the record that the Board expressed no installation of commercial appliances but would not make that a condition of the decision.

Chair Maloney looking at the letter of the Selectmen added that it contained six points, one of which is to obtain the required variances; Site Plan by the Planning Board; Relocation of the septic; that's done. Fire and Safety described in the May 12 report. Mr. Snyder stated "That's where the wiggle room is."

Attorney Cronin advised that if someone files an appeal and Planning Board delays another 30 day window would be gone, the summer could be gone. Mr. Snyder agreed that getting on the agenda for the Planning Board could be difficult with Town Meeting approaching but Site Plan review is appropriate. Mr. Gesel stated that he could go part of the season without an ice-cream shop and that is his livelihood. Mr. Snyder agreed that there is a risk but it doesn't prevent you. Mr. Gesel reminded that next month there is another applicant coming before the Board. Mr. Bunker advised that each change has to have its own Site Plan Review.

Mr. Maciaszczyk motioned to accept the conditions set forth above 1-3. Vice Chair Scott seconded his motion, all in favor, so moved.

Hobby Shop

Chair Maloney advised that it has not had its Site Plan review and fire code has not been completed, same condition on that. "No temporary c/o considered until life safety." "Roll in together."

Chair Maloney motioned to grant the variance from Article 5.3.2 to allow the existing hobby shop to operate. Mr. Snyder seconded her motion subject to the same three conditions 1-3 above. Mr. Scott, Mr. Snyder, Mr. Maciaszczyk, Mrs. Cashman and Chair Maloney voted in favor, so moved.

(3) Signs

4.4.2.1 is one sign per lot, 4'x4' advised Mr. Snyder. Within ten feet of public right of way. There is an 8' sign that has been there. According to the violation notice, the location of sign with the open flag is too close to the road. Chair Maloney asked if that was the one in the planter? Mr. Gesel replied affirmatively. Chair Maloney asked "how many?" Mr. Gesel responded that there is one sign in the planter the portable flag goes into." Attorney Bennett added that there are a couple of the building itself. Mr. Snyder stated that the real issue is the bigger sign in the "planter." "How long has the planter been there?" Mr. Scott added that it had been there since at least '71."

455 Mr. Bunker advised that the sign at issue is the one with the open flag, those are not allowed,
456 free-standing are prohibited as is off-premises, i.e. a sign that is not on your property, that's
457 what the moving ice-cream is." Then there is the ice-cream cutout to the left of the door, the
458 banner."

459
460 The old ordinance of 6' allowed 32-35' in total.

461
462 4.4.3.3 movable signs prohibited continued Chair Maloney, put on town property!

463
464 Mr. Snyder asked if it could be utilized without being placed on town property, moving it to the
465 other side of the lot? Mr. Gesel responded that he would still need a variance because its
466 movable.

467
468 Chair Maloney asked about the banner. Mr. Gesel responded that it was an Italian ice brand
469 1'x4' plastic banner attached with grommets.

470
471 Mr. Snyder opined that he was ok with signs, but not on town property. The big sign has been
472 there forever. The ice-cream sign is clever." "The open sign is movable but doesn't say
473 anything." Mr. Gesel added it says "Bliss."

474
475 Mr. Snyder continued that its been there a long time, it's a residential zone. "It doesn't look
476 like one, never has." "If it walks like a duck....at some point." "the way they look now, if
477 you're not intending to change, is not offensive, not overly commercial, doesn't sparkle."

478
479 Mr. Scott added that he guessed he would be comfortable if all the farmers weren't having
480 grief advertising composting, hay, etc. Attorney Cronin offered to send an excerpt on farms
481 purposes.

482
483 Chair Maloney stated "Only current signs." "Allow existing signs to remain." "Movable signs
484 shall not be put on town or public property."

485
486 Attorney Cronin waived reading of the criteria.

487
488 **Chair Maloney motioned to grant a variance of 4.4.2.1, 4.4.3.3 and 4.4.3.4 to allow the**
489 **existing signs to remain and movable sign not to be put on public property. Mr. Scott**
490 **seconded her motion. Chair Maloney, Vice Chair Scott, Mrs. Cashman, Mr.**
491 **Maciaszczyk and Mr. Snyder voted affirmatively, so moved.**

492
493 Mr. Scott stated "You're aware of the 30-Day Appeal period?" Attorney Cronin stated that he
494 was.

495
496 Chair Maloney recessed the Board for a five-minute break at 8:35 pm.

497
498 Attorney Bennett, Attorney Cronin, Mr. Gesel, Mr. Bunker, and Mr. Methot departed the
499 meeting.

500

501 Chair Maloney reconvened the meeting at 8:40 pm.

502

503

504 2. Tax Map 002, Lot 70 in the R1 Residential Zone located at 236 Haverhill Road.

505

506 Continuance of hearing of Eric Mitchell for Amber Bell-Ragnarsson, 236
507 Haverhill Road, M/L 002-070-000 for a variance from Article 5, 5.3.5 (Table 1)
508 for a 3-lot subdivision of which 2 lots have short frontage and driveway side
509 setbacks.

510

511 Chair Maloney re-read the Public Hearing Notice and recognized Eric Mitchell who presented
512 the application on behalf of Ms. Ragnarsson. Mr. Mitchell introduced a large color plan to the
513 easel indicating that it was an aerial view of the property with the existing house shown, a
514 circular driveway, barn, paddock, open field, the tree-line and side of lot. Mr. Mitchell
515 indicated that the problem is the driveway to the existing house gets close to the existing barn
516 and septic. They considered having the driveway be common to the land out back but the
517 decision was made that it was best to be on their own lot rather than creating easements and
518 common driveways. Mr. Mitchell stated that to move the driveway is problematic because of
519 the location of the septic system.

520

521 Mr. Mitchell read his copy of the application and Vice Chair Scott stopped him to advise that
522 he was not reading the application that he had. The secretary handed Mr. Mitchell a copy of
523 the application that had been submitted. Mr. Mitchell apologized stating that he was unaware
524 that the two he had submitted had been combined by the applicant.

525

526 Mr. Mitchell proceeded. "Two lots have less than the required 290' frontage, 70-1 and 70-2."

527

528 Mr. Snyder asked "What's the intended use?" Mr. Mitchell indicated that it would be a single-
529 family house lot. "Ms. Ragnarsson lives there and its too much to take care of, maybe she or
530 a family member will live there." "The intention is to have three single-family lots, one with the
531 house on it."

532

533 Mr. Snyder stated that "If you didn't have the third lot you would have more than 290' for that
534 lot."

535

536 Frontage:

537 Public Interest

538

539 Provided for larger lots than required to maintain the rural character with shortage of frontage.

540

541 Spirit

542

543 There is hundreds of feet between them, the rural character is maintained. The remainder
544 house will not be seen from the road, will be 400' from Route 121.

545

546 Substantial Justice

547

548 The owner can downsize or do her estate planning and allow ample space for the lots.

549

550 There is no harm to the public.

551

552 Values

553

554 There is plenty of space, the side yard setbacks are exceeded.

555

556 Hardship

557

558 The existing driveway entrance cannot be moved because of the slope and location of the
559 septic.

560

561 The use is a reasonable one. It is reasonable to have one driveway on the same lot as
562 opposed to having an easement. The creation of a lot on 24 acres is reasonable. 435' from
563 the road is reasonable. The driveway frontage would be smaller.

564

565 Driveway setbacks

566

567 Public Interest

568

569 Is in a good location.

570

571 Spirit

572

573 There is ample room on adjacent lot to build, would not overcrowd Lot 70-1.

574

575 Substantial Justice

576

577 It permits the existing driveway to stay on the same lot as the existing house.

578

579 Values

580

581 The driveway is existing. There is no impact on surrounding properties.

582

583 Hardship

584

585 The driveway is existing and cannot be moved because of the slope and existing septic. If
586 the driveway were to be moved, the proposed lot would have less frontage.

587

588 The use is reasonable. The adjacent lot has ample room to build on. Maintaining a 25'
589 setback would decrease the frontage on the adjacent lot and want to avoid common and
590 shared driveways, which would not be reasonable. "You won't see anything different from the
591 road when finished." The drive is as is and you won't see the lot out there. Its still a sufficient
piece of property being on 25 acres.

592

593 Vice Chair Scott polled the public present in the meeting room and asked if anyone would like
594 to make any statements.

595

596 Questions – none.

597

598 DISCUSSION:

599

600 Vice Chair Scott

601

602 There is ample room for two conforming lots to be developed on this property. I can think of
603 two prior permits we have looked at where mutual driveways have been welcomed. One was
604 a long, long driveway with easement verbiage in deeds. An easement driveway is not a
605 problem with us. Whoever were to buy 2-70-1 with full knowledge of the easement existing
606 (your words Mr. Snyder on the Cannata subdivision). I do see a problem creating two non-
607 conforming lots. I don't see a reason to do that. Another problem, is, I was hoping Mr.
608 Martino would be here, when the property at 270 Haverhill sold, I looked at that with my sister,
609 deals with values of property looked at field next door, helped bale hay since teenager,
610 sledged there. If there were a driveway next to Mr. Martino I don't believe it wouldn't devalue
611 his property value. 69-2 would be diminished.

612

613 I am comfortable with easements on driveways and two lovely lots. I have not heard
614 testimony that this is the correct way to go. Hardship is owing to special conditions. This
615 property is almost identical, lovely house, horse farm, paddocks, to those all over town. I took
616 a ride. Gregsak, Blackstrap Farm have paddocks, horse barn, acreage and Halls Village
617 across the way. Monks Farm is another big acreage. I don't see anything unique that would
618 create a hardship. I would vote no on those three.

619

620 Mr. Snyder

621

622 If it were two parcels you wouldn't need any variances. This goes ultimately before Planning
623 Board for Site Plan review.

624

625 Mr. Mitchell

626

627 Looking at here because of acreage, slope and configurations, the house lot with line come
628 down through here. If we give 290' to this lot and 290' to that one we could put a subdivision
629 down there and get additional lots. She's trying to keep the character and downsizing. If she
630 put a road in we wouldn't be here either. Its reasonable to have a third lot where you could
631 get two as opposed to putting in a road and getting even more lots. Common driveways, a
632 state controlled road, you need if you can't get Site distance, not that they can't be done, but
633 if neighbors don't have to plow eachothers driveways, then its not a bad thing to avoid
634 easements or common driveways.

635

636 Chair Maloney

637

638 I've seen it, its beautiful.

639

640 Mr. Mitchell

641

642 Trying to keep the character. As far as the neighbor's property, there is nothing to say that
643 someone couldn't put a 25' driveway anyway.

644

645 Mr. Snyder

646

647 If we are going to allow a three-lot subdivision I think this is a good configuration, should it be
648 two lots or three?

649

650 Chair Maloney

651

652 Its such a beautiful piece of land. I'd rather see it be two lots that don't need variances. I
653 don't know why you have to chop it up and get two sub-standard lots with improper frontage.

654

655 Mr. Mitchell

656

657 This is 36 acres of land. Its not putting more houses or making it busier, there is a lot of
658 separation. Amber-Bell wants to do something with the property she doesn't want to maintain
659 a road down there and get some lots down through here. She doesn't want to do that. That
660 doesn't require variances either. She is trying to do estate planning with land she has owned
661 for a long time. Three lots seemed to make sense. It's a reasonable configuration.

662

663 Mr. Snyder

664

665 Or just have two lots

666

667 Vice Chair Scott

668

669 What are the special conditions that distinguish it from the other properties in the area, across
670 the street?

671

672 Mr. Mitchell

673

674 The existing driveway to the existing house, more than 400' down the hill, the septic system.

675

676 Vice Chair Scott

677

678 The concern is that this property is not unique and you could divide it into two lots with no
679 variances at all. A driveway is not unique.

680

681 Mr. Mitchell

682

683 There is a steep slope and septic next to it.

684

685 Vice Chair Scott

686

687 You can get two lots.

688

689 Mr. Mitchell

690

691 Three lots on 36 acres is reasonable.

692

693 Vice Chair Scott

694

695 An attorney argued this, acreage versus frontage. I hoped the Planning Board would say
696 hey that's a great idea. It went nowhere. I'm not hoping the Planning Board would entertain.

697

698 Chair Maloney

699

700 The only one I have a problem with is the hardship.

701

702 I don't think the applicant has convinced us that there is special conditions of this property or
703 that a three lot subdivision is reasonable, two is reasonable.

704

705 Mr. Snyder

706

707 The size of the property.

708

709 Mr. Mitchell

710

711 The driveway location is something that's on the property and moving it would be difficult and
712 that's why its unique. That doesn't get to the question of should it be two lots or three. Is it
713 reasonable to have three lots on 36 acres or two lots with a subdivision? Its more reasonable
714 to have three lots as opposed tot wo that don't' require and a public road that creates 3, 4 or 5
715 lots. It does keep the character of the neighborhood. It won't be 35 acres with horses
716 anymore, but a subdivision. You won't be able to see houses out back, not that I want to see
717 a subdivision but.

718

719 Vice Chair Scott – I have to vote no.

720

721 Chair Maloney – I don't think this is the kind of property that a developer would want to put a
722 road in.

723

724 Ms. Ragnarsson – I have been approached by several developers. It's a beautiful piece of
725 land with wildlife, financial hardship. Should I have a developer because I've been
726 approached? Have one of my kids and leave that rural character and not build it up like
727 Jenkins up the street? I want that back lot and not to develop it. My neighbor has no
728 problem with it whatsoever. My building there has built up everybody's property values.

729

730 The Hearing was closed to the Public at 9:20 pm.

731

732 Mr. Maciaszczyk - I hate to see the road, I hear your side, why create two non-conforming
733 lots when you don't have to.

734

735 Mr. Snyder - Road or subdivision thinking is distracting. Prefer to see two lots applicant is
736 getting a third lot that's a financial gain on the flip side the third house in back won't look any
737 different except three drives instead of two. Having a hard time seeing hardship and agree
738 with Mr. Scott on properties of similar. One nice lot instead of two additional lots. Not a
739 strong supporter.

740

741 DELIBERATIONS:

742

743 Chair Maloney – Let's review the five points.

744

745 Public Interest, Spirit is observed. Must not alter the essential character of the neighborhood,
746 true. Substantial Justice, there is no harm to the public. Values, Don't think would decrease.
747 Hardship is the problem.

748

749 Mr. Maciaszczyk - Moving driveway.

750

751 Vice Chair Scott – Even moving driveway wouldn't give you.

752

753 Mr. Maciaszczyk - The proposed use is a reasonable one, we heard this all the time, which is
754 their legal right to do. Would you rather have three lots or a subdivision in there.
755

756 Chair Maloney – Better three than a subdivision but I don't see the other half of it.
757

758 Mr. Snyder – Hardship is all about the driveway, not germane to the hardship that would be
759 necessary to the creation of two substandard lots.
760

761 Mrs. Cashman – I really like that this prevents one building and disruption and addresses
762 homeowner needs, but weighing the hardship or preference. I don't know.
763

764 Vice Chair Scott – Hardship must be on the property, not on preference or issue of one,
765 hardship on property must be established. It can be subdivided in strict conformance with the
766 ordinance. Its being reasonably used now and could be reasonably used where two lots
767 conform.
768

769 Chair Maloney – Applicant has to come in and prove hardship and you haven't proved to
770 make three lots instead of two. I would say there is no hardship making three lots proven.
771

772 Mr. Snyder – We're all okay with points 1-4, not enough votes for 5, the hardship.
773

774 **Vice Chair Scott** - I also add that I do believe that it would devalue it, that close, so **no on**
775 **#4 and 5 which would cause me to vote no on this application.**
776

777 Votes:
778

779 **Mr. Maciaszczyk - Yes to first four, no to five, so vote no.** Its not necessary to create two
780 non-conforming lots. Proving the property has an actual hardship.
781

782 Mr. Snyder – In some ways its unique. Its beautiful there. There are a lot of properties that
783 are like it. Its not distinguished from other properties in the area. In Part B there are other
784 properties with the same issue.
785

786 **Chair Maloney** – The applicant has failed to prove hardship in subdividing this property into
787 three lots, two of which have short frontage. **Can't vote for number five, so have to say**
788 **no.**
789

790 Vice Chair Scott – Add to hardship. This property can be reasonably used in strict
791 conformance, subdivided into two lots. A variance is not necessary to enable reasonable use.
792

793 Mrs. Cashman – Mr. Martino has not shown up and said this property would devalue his
794 property. Not a hardship but a preference, rather than working as is.
795

796 **Vice Chair Scott moved that the application from Article 5 (5.3.5) Table 1 to permit be**
797 **DENIED. Mr. Maciaszczyk seconded his motion. Chair Maloney was in favor of the**
798 **motion to deny. Vice Chair Scott voted in favor of the motion to deny. Mrs. Cashman**

799 ***voted in favor of the motion to deny. Mr. Maciaszczyk voted in favor of the motion to***
800 ***deny. Mr. Snyder voted in favor of the motion to deny. SO MOVED.***

801
802 Vice Chair Scott read the 30 Day Notice of right to Appeal outloud.

803
804 Ms. Ragnarsson and Mr. Mitchell departed the meeting room.

805
806 Adjournment

807
808 Mrs. Cashman motioned to adjourn the meeting. Chair Maloney seconded her motion, with
809 all in favor. So moved. The meeting of the Zoning Board of Adjustment was adjourned at 9:50
810 pm.

811
812 Respectfully submitted,

813
814
815
816 Nancy J. Hoijer.
817 Administrative Assistant